Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1979

No. 80-1

ANNA STANTON GREEN,

Petitioner,

vs.

ELIOT BARTHOLOMEW, ROBERT KLIPSTEIN, P. RAYMOND SIRIGNANO, PHILIP E. PUGSLEY, HARRY MOOREHEAD, JOSEPH CALIFANO, COMMISSIONER OF THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, AND THE UNITED STATES POST OFFICE, AND THE NEW YORK BANK FOR SAVINGS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

1. Whether this Court's opinion in *Parham v. J.R.*, 442 U.S. 584 (June 20, 1979) may be lawfully applied by the United States Court of Appeals for the Second Circuit to petitioner, as a 94-year old, alert, able widow, and/or in the circumstances, as petitioner whose complaint was brought and dismissed prior thereto?

2. Whether petitioner has a constitutional right to protection from a state law as written or applied against her by respondents:

(a) To "examine" or "test" her *psyche*, whether defined as soul or mind, against her will, or otherwise replace the rule of law by the rule of pseudo-medicine, called "psychiatry", in violation of the First Amendment;

(b) To take from her, her bank accounts, social security checks, revoked will, and liberty, in violation of the Fourteenth Amendment;

(c) To take from her the earned compensation for her past labor by currently subjecting her to a deprivation of liberty in violation of the Thirteenth and Fourteenth Amendments?

3. Whether petitioner may have redress by an action pursuant to Title 42 U.S.C. §1983, as a deprivation by respondents of her constitutionally secured rights, under color of law, and pursuant to Title 18 U.S.C. §1961, *et seq.* for triple damages from respondents' organized pattern of racketeering against her, under color of law, in violation of the State Penal Code?

4. Whether the opinion of the Court of Appeals for the Second Circuit is made legally invalid by improper procedures including:

(a) Assignment of judges and scheduling of hearing prejudicially by the court's assignment authority;

(b) Irreparably prejudicial striking-out of essential part of appendix of appellant (petitioner), by order of a single judge, the Hon. Walter R. Mansfield, before the appeal was considered;

(c) Disregard by the Hon. Walter R. Mansfield and the Hon. Leonard P. Moore of their obligation under Title 28 U.S.C. §455 to disqualify themselves when their impartiality might reasonably be questioned, as petitioner requested before the hearing of the appeal;

(d) In these circumstances, assessment of double costs to be paid by petitioner's attorney and statement in the opinion that all of this deserves reference to the Bar Association's Grievance Committee for disciplinary action?

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OPINIONS BELOW

The United States Court of Appeals for the Second Circuit by an opinion of the Hons. Sterry R. Waterman, Leonard P. Moore and Walter R. Mansfield, dated January 8, 1980, affirmed the judgment of the United States District Court for the Southern District of New York, by the Hon. Robert W. Sweet, granting summary judgment for respondents and dismissing the complaint. The opinion of the court of appeals is unreported and is reprinted as page 1a of the appendix hereto. The opinion of the district court is unreported.

STATEMENT

The petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered January 8, 1980, upon a timely petition for a rehearing en banc denied on March 4, 1980 and an extension of time to file a petition for a writ of certiorari to and including July 1, 1980 ordered on May 19, 1980, by Mr. Justice Marshall, Circuit Justice for the Second Circuit.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to Title 28 U.S.C. §1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First, Thirteenth and Fourteenth Amendments of the United States Constitution are involved herein, as are 5 U.S.C. §§701-706, 18 U.S.C. §1961, *et seq.*, 28 U.S.C. §1331, 28 U.S.C. §1339, 28 U.S.C. §1343, 39 U.S.C. §409 and 42 U.S.C §1983.

STATEMENT OF THE CASE

A. Factual Summary

Mrs. Green, a 94-year old widow, clear as a bell, with savings in excess of $100,000 was taken against her wishes to Peekskill, from Manhattan (where she had always lived) by her ex-son-in-law, Bartholomew, (who lives in Peekskill). He was married to her only daughter who died a dozen years ago. A few months before the daughter died, Mrs. Green left her entire estate to her, in a will drafted by Bartholomew's lawyer, and retained by him, that also made Bartholomew her sole heir should her daughter predecease him. About three years ago Bartholomew surreptitiously began an informal attempt to have Mrs. Green declared incompetent in Manhattan, resuming it in Westchester County through a physician, a psychiatrist and a psychologist and then formally petitioned the New York Supreme Court there, by attorney to become her "conservator" under the Mental Hygiene Law as "mentally incapable". Her opposition was clear but ineffectual without an attorney.

When she found an attorney, Gene Crescenzi, she went to state court, called the psychiatrist Moorehead a liar, saying that she had always managed by herself, and neither needed nor wanted a "conservator". On cross-examination, Moorehead testified that his only personal observation for his conclusion of "mentally incapable" was that: she was secretive about her bank accounts; she was slow (but correct) in substracting 7 from 35; and she looked out the window. He further admitted on cross-examination that respectable professional opinion held that his purported expertise, psychiatry, was religion, concealing this from her.

Mrs. Green revoked her will and then asked Mr. Bartholomew's lawyer to return it, (it had been previously represented to have been lost in a burglary or destroyed in a fire) but its return was refused, and it was filed with County Clerk

Pugsley, who also refused her request for its return. State Judge Sirignano admitted that Mrs. Green was "alert" but denied her relief on procedural grounds, assigning her bank accounts and social security checks to Bartholomew.

B. Procedural Summary in the District Court and Court of Appeals

This federal action followed by petitioner in the Southern District of New York, on August 25, 1978, seeking declaratory judgment and injunctive relief from Bartholomew and all co-defendants (plus damages from Bartholomew and private co-defendants' private wrongdoing) to declare unconstitutional Section 77.01 of the New York Mental Hygiene Law, as written or applied, enjoin their use of it against her and direct return of her bank accounts, social security checks and will. Her complaint is of deprivation of her First, Thirteenth and Fourteenth Amendment rights under color of state law, and asks for the statutory redress provided, particularly under 42 U.S.C. §1983, the Civil Rights Act and 18 U.S.C. §1961, *et seq.*, the anti-racketeering law.

The district court heard no testimony before granting respondents' motion for dismissal and summary judgment. But petitioner's motions for an injunction pending appeal, made first in the district court and then in the court of appeals, yielded by answering and reply affidavits substantial proof of her claims.

Moreover, Bartholomew's lawyers are members of a politically-connected law firm, whose partner Robert Blum (Bartholomew's counsel in the federal proceedings) was New York City Mayor Lindsay's assistant when the Honorable Robert W. Sweet (the United States District Judge who dismissed this Green suit) was Deputy Mayor. The personal relationship of Mr. Blum with the Honorable Robert W. Sweet goes back a quarter of a century.

The motion for an injunction of the court of appeals was heard orally by the Hons. Oakes, Moore and Newman, on

September 25, 1979. Judge Moore then openly showed his personal bias or prejudice in favor of the pseudo-medical practice complained of by asking "what do you say to the psychiatric report?" when counsel explained that Mrs. Green was not a basket case, that Bartholomew swore falsely, that she took care of herself completely, walked, talked and even danced; her counsel's reply to that by her First Amendment claim was then ignored. The motion was denied without hearing further argument then, but extending petitioner's time for the appeal brief still to be filed.

The *Parham* case had not even been mentioned, despite ample memoranda of law prepared for the motion.

The *Parham* case was first mentioned in November of 1979, in the answering brief of counsel for Bartholomew, Robert Blum. It was cited only from advanced sheets. The official report first became available in New York City in April 1980, and all the papers, including briefs are still not available here.

Only in December 1979, were the judges who were to hear the appeal on December 7, 1979 identified. Only Judge Moore from the September motion panel, whose bias against Mrs. Green was then so evident, was on the appeal panel. Judge Moore and another judge on the new panel, the Honorable Walter R. Mansfield, were then asked to recuse themselves by petitioner's counsel in view of their long records of decisions hostile to any relief from "psychiatric" oppression; but this request was ignored. Simultaneously, Judge Mansfield, as a single judge, granted a motion by Bartholomew's counsel to strike from the appendix all papers filed in motion for an injunction including substantial proof of petitioner's claim.

At oral argument of the appeal, on December 7, 1979, neither Judge Moore nor Judge Mansfield said a word. Judge Waterman hostilely asked petitioner's counsel "who are you?" when oral argument began, implying that he was not recognized

as Mrs. Green's counsel, ignoring Mrs. Green, then personally present. Bartholomew's counsel urged support for "wisdom of medicine" (his exact words). Mrs. Green's counsel was allowed neither rebuttal nor any constitutional argument.

A two-page opinion, dated January 8, 1980 is personally signed by the Honorable Leonard P. Moore and the Honorable Walter R. Mansfield. The name of the Honorable Sterry R. Waterman is written in "per W.R.M." (Judge Mansfield).

It assesses double costs to be paid by petitioner's attorney, calls the action and appeal frivolous, its characterizations intemperate, all of which it says, deserves reference to the Bar Association's Grievance Committee for disciplinary action.

The record office of the court of appeals has no copy of this opinion, according to inquiry there. It is not a "slip opinion", but what is called there a "summary judgment" and hence unpublished. But a judgment thereon has been filed in the district court, with collection of "double costs" pending thereby, and disciplinary action begun against petitioner's attorney. Review is now sought in this Court from what is obviously not the accepted and usual course of judicial proceedings in the court of appeals.

C. Summary of Issues of this Case

This is a case of first impression. It raises fundamental issues of deprivation of constitutional rights of (1) a senior citizen; (2) a non-believer in a secular religion or cult of the psyche, whether called soul or mind, and from the practice thereof imposed under color of law, by pretended experts called "psychiatrists"; (3) a victim of a pattern of racketeering, under color of law; (4) an aggrieved citizen, suing for relief by one's own freely chosen counsel.

D. Summary of the Constitutional Claim

First Amendment rights are claimed against pseudo-medical tyranny, both for the aged, and for dissenters by conviction, and from *de facto* judicial abdication to, and usurpation by, purported "medical" expertise that is not in fact medical, but concealed theology, which has unconstitutionally elevated the American Medical Association and its affiliate, the American Psychiatric Association, and their professional associates, to a *de facto* privileged class or nobility of usurpers. In consequence, the lawless pseudo-medical tyranny of early American colonial witchcraft laws, and of the more recent dictatorship of Mussolini and Hitler and current Soviet psychiatry, have now become commonplace here. That this is a question of exceptional importance is evident. It is also a question of great practical importance, as shown in the papers for an injunction pending appeal, by the generating of such systematic First Amendment violations, of an inquisitional civil strife (including anti-Semitism and other negative ethnicity) which it is the very purpose of the First Amendment to avoid.

This claim, moreover, is based on what is now known by an educated public and what is long overdue in American law practice: that the 19th century, pseudo-Greek, neologism "psychiatrist" (from Socrates' "healer of the soul") designates those professing and practicing a secular confessional creed and its rites, actually a pastoral religion (not petitioner's) under pseudo-medical pretense.

E. Summary of the Claim for Relief from a Pattern of Racketeering

Relief is now sought from what is actually a white collar crime industry, operated by lawyers and physicians, through past and present political connections. It is comparable (even in price) to the sale of "lettre de cachet" abolished by the French Revolution. Its victims (including many aged persons) denied all

redress, grow more numerous with the increase in practitioners and their government financing. This statutory "pattern of racketeering" claim, was well-researched, in law and in fact, with numerous witnesses ready to testify from personal knowledge thereof, for relief from a growing industry of purported university-diplomaed "expertise" requiring fee-paying submission thereto, under threat of legal disability — the same constituting extortion and larcenous conspiracy, under color of state law.

F. Essential Part of the Opinion in the District Court as Constitutionally Challenged in this Petition

The United States District Court's opinion of May 4, 1979:

> "The court finds that psychiatry is a bona fide aspect of the medical profession. The state of New York and, to this court's knowledge, every other state in the United States, has impliedly concurred in this determination, as evidenced by criminal code provisions that permit, and at times require, the examination of a criminal defendant by a qualified psychiatrist. See *e.g.*, N.Y.C.P.L. Sect. 330.20 (McKinney's Supp. 1978). The Supreme Court has never denied the constitutionality of psychiatric examination nor, to this court's knowledge, has the argument advanced by the plaintiff ever been sustained. In addition, the court notes that to become certified as a psychiatrist, a person must be a licensed physician. *See* The American Board of Psychiatry and Neurology, Inc., Directory of Medical Specialists (17th Ed. 1975-76), at 2174. No such licensing requirement is normally imposed upon religious leaders. *Cf. People v. Cole*, 219 N.Y. 98, 111 (1916)."

G. Essential Part of the United States Court of Appeals Opinion of January 8, 1980 in Reference to this Constitutional Challenge:

> "A careful review of the record, briefs and oral argument disclose that the claim is frivolous and completely without merit. The judicial use of psychiatric examinations and opinions in determining a person's mental fitness, capacity and need for treatment or protective and institutional care is well recognized and widely accepted, provided the subject is accorded due process. *See e.g., Parham v. J.R.*, ___ U.S. ___, 47 U.S.L.W. 4740 (June 20, 1979) . . . .Appellant was examined by a *court-appointed* psychiatrist, appellant Dr. Harry Moorehead, who confirmed the view of Dr. Stuart Pines, that appellant is suffering from a deteriorating mental condition rendering her unable to care for her personal property and necessitating care in a nursing facility." (2a-3a).

Clearly the opinions below flagrantly disregard facts, law, and constitutional principle, and petitioner's claim for relief, and have so far departed from the accepted and usual course of judicial proceedings (as is shown by the Factual and Procedural Summaries above), that the reasons for granting review by a writ of certiorari are compelling.

Petitioner's challenge to these opinions, which is based on petitioner's 25-page argument in briefs in the court of appeals is succinctly summarized below, with rebuttal of the applicablity of *Parham*.

REASONS FOR GRANTING THE WRIT

I.

The opinion in *Parham v. J.R.* is no authority for the opinion below sought to be reviewed by this petition.

The Supreme Court's opinion in *Parham v. J.R.*, 442 U.S. 584 (1979), is completely irrelevant to the *Green* case, and does not even mention, much less reverse the cases on which petitioner relies: *Reynolds v. United States*, 98 U.S. 148 (1878); *Abington School District v. Schemp, Murray v. Curlett*, 374 U.S. 203 (1963); *Torcaso v. Watkins*, 367 U.S. 488 (1961); *Board of Education v. Barnette*, 319 U.S. 624 (1943).

Mrs. Green claims First Amendment protection from respondents

> "subjecting her, against her will, to a pseudo-medical and pseudo-scientific confessional faith, persuasion, or belief, and the practice thereof, known as psychiatry, psychology, mental hygiene, and similar names, and to a larcenous tyranny thereby, by physicians, including psychiatrists and a psychologist" (p. 8 of appellant's brief).

There is no such claim in *Parham*. Indeed, the First Amendment isn't even mentioned there.

A nominal plaintiff in *Parham v. J.R.*, a child not otherwise identified, then about seven years old, who can scarcely have found an attorney and brought suit on his own volition, either in fact or in law, is *non sui juris*. In contrast, Mrs. Green is a fully grown-up woman, actually and actively choosing her attorney, and by him, actually bringing this suit. She herself said "that if another psychiatrist came, she would not let him through the door."

Moreover, the question presented in *Parham* is specifically limited to "a minor child."

Judge Sweet disposed of Mrs. Green's First Amendment claim by finding that "the Supreme Court has never denied the constitutionality of psychiatric examination." This is certainly a misleading statement. No such matter has ever been before this Court in these words. All that *Parham* decided is what a due process requirement (no First Amendment issue was raised) to admit little children to a state institution is. It is to be doubted, moreover, that this Court will ever have before it such a matter *in these words*. They aren't the words of Mrs. Green's claim, and are legally meaningless words per se.

II.

Petitioner's First Amendment claim is supported by our constitutional history and current scholarship.

Mr. Chief Justice Waite in *Reynolds v. United States*, 98 U.S. 148, 164 (1878), wrote that the word "religion" is not defined in the Constitution, but held to be authoritive Jefferson's lucid language defining it in Virginia's statute on religious freedom, that was designed not to allow "the civil magistrate to intrude his powers into the field of opinion . . . ." It is from this "field of opinion," in which current scholarship, now well known to an informed public, includes psychiatry, etc. as a pastoral, not a medical practice, that petitioner seeks relief. ("Psychiatry" it should be noted was not invented until well over half a century after the First Amendment was adopted.)

More recently secular beliefs have been enumerated as falling under First Amendment protection, by Mr. Justice Black in *Torcaso v. Watkins, supra* at 495, as well as "other matters of opinion" by Mr. Justice Jackson, in *Board of Education v. Barnette, supra* at 642, who at 639, moreover, significantly noted that:

> "it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and the cases in which it is applied for its own sake . . . .Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard."

Statutory support for this claim is found in New York Education Law §6521, in which the definition of "medical practice" is limited to "physical condition."

Scholarly support for this claim is found in:

1. *The Standard Edition of the Complete Psychological Works of Sigmund Freud,* Vol. XX, pp. 252-256: his "relief" is not through catholic, protestant, or socialist community, but by a "secular pastoral worker" by "pastoral work."

2. Thom S. Szasz, professor of psychiatry, in *American Law: The Third Century,* (ed. by Bernard Schwartz), Hackensack, N.J., 1976, pp. 365-376: Psychoanalysis (and psychiatry) is not a branch of medicine, but religion.

3. E. Fuller Torrey, psychiatrist-anthropologist and National Institute of Mental Health official, in his *The Mind Game: Witchdoctors and Psychiatrists,* 1972 and *The Death of Psychiatry,* 1974: techniques of psychiatry in western culture are part of religion.

4. An especially prepared 11-page historical memorandum showing "mental hygiene" as institutional implementation of William James' "natural religion reform of church Christianity" (Appendix, *infra* at 9a).

III.

Important Issues Raised

This case if of the greatest importance, both for reasons of substance and procedure.

The substantive reasons generally summarized above are: redress for deprivation of constitutional rights of a senior citizen, as well as of a non-believer in a secular religion or cult of the psyche, whether called soul or mind (psychiatry); and redress for a victim of a pattern of racketeering. It is impossible to exaggerate the importance of these issues.

This is so if only from the viewpoint of senior citizens by their increasing number, and the increasing possibilities of their being victimized by predatory schemes in the guise of "conservatorship," as in this case. But there is also an increasing number of citizens of all ages (including many teachers) being victimized by other predatory schemes, all under color of law, and pseudo-medical or pseudo-scientific practices called psychiatry, mental hygiene, or similar names. Mrs. Green is included in both categories.

This opinion of the court of appeals must be reviewed by this Court in order to secure, in practice, elementary constitutional rights not only to Mrs. Green, but to all of the many victims, both actual and potential, who may be similarly aggrieved. At present, neither she, nor they, have or will have any redress. For this reason Mrs. Green's motion for an injunction pending appeal was supported by sworn affidavits of fact and principle, included therein, by Mrs. Reheis, Mrs. Buck, and Mr. Plotkin. (Others were present and ready to so testify at a district court hearing, but were not heard.) Significantly, Judge Mansfield granted a motion to strike a supplemental appendix in the court of appeals that included these affidavits.

The categories of citizens so victimized by actual or attempted "lettre de cachet" include public officials. For the United States to remain a country ruled by law, this opinion of the court of appeals must be reviewed by this Court. The time to prevent "psychatric" damage to the rule of law from becoming catastrophic, and from which neither lawyers nor judges could hope to escape, is now, by granting the writ of certiorari.

From the beginning of World War I, the number of members of the American Psychatric Association has increased from a mere 500 to about 30,000 (doubling every decade). Their victims, baselessly and fraudulently alleged to be "mentally ill," are increasing as rapidly.

The Nazi cult of racism, which had such staggeringly devastating consequences, was only *one* example of the perniciousness of pseudo-science; Americans are now experiencing another, called "mental," or "mental hygiene," or "psychiatric," or similar names.

It is a matter of record that in a recent public announcement the Hon. Irving Kaufman, who until now had assignment authority, as Chief Judge of the Court of Appeals for the Second Circuit, arbitrarily dismissed as "irrational" the growing number of plaintiffs denied such redress in his court.

The *Parham* decision is now being used to put the stamp of approval of this Court on predatory "psychiatry" and give unlimited license to its practices under color of law.

Procedurally, this opinion of the court of appeals is equally repugnant to the Constitution by denying Mrs. Green counsel of her choice, in violation of due process of law, by *ex post facto* invocation of *Parham* to penalize her attorney, and by making those whom it designates as "psychiatrists" into a privileged class, bound by no law, and beyond the reach of any legal redress.

Petitioner's attorney is being subjected personally to "double costs" for bringing petitioner's action and appeal. This is being done by *fiat*, without notice, much less a hearing. The court of appeals has thereby usurped a power not lawfully conferred on it. Its jurisdiction, to hear and decide appeals, cannot be construed to deprive Mrs. Green and her attorney of all legal standing, by penalties. By arbitrarily calling "frivolous" a constitutional claim of the greatest importance, the Hons. Waterman, Moore and Mansfield undeniably further demonstrated their own personal bias and prejudice.

Clearly, by this opinion and the procedures it discloses, the court of appeals has departed from the accepted and usual course of judicial proceedings; it has also, by its misapplication of *Parham*, decided a constitutional question of the greatest importance that has not been, but should be, settled by this Court. Under Rule 19, this Court should therefore review the court of appeals opinion.

CONCLUSION

Petitioner respectfully prays that the petition for a writ of certiorari be granted.

Respectfully submitted,

s/ GENE CRESCENZI
Attorney for Petitioner

APPENDIX I - OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DATED JANUARY 8, 1980

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

FILED JANUARY 8, 1989

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the eighth day of January, one thousand nine hundred and eighty.

Present: HONORABLE STERRY R. WATERMAN,

HONORABLE LEONARD P. MOORE,

HONORABLE WALTER R. MANSFIELD,

Circuit Judges

ANNA STANTON GREEN,

Plaintiff-Appellant,

-against

ELIOT BARTHOLOMEW, ROBERT KLIPSTEIN, P. RAYMOND SIRIGNANO, PHILIP E. PUGSLEY, HARRY MOOREHEAD, JOSEPH CALIFANO, Commissioner of the Department of Health, Education and Welfare, and THE UNITED STATES POST OFFICE and THE NEW YORK BANK FOR SAVINGS,

Defendants-Appellees.

Docket No. 79-6031

Appendix 1

Anna Stanton Green, 93 years old, through Gene Crescenzi, Esq., appeals from orders and judgments of the District Court for the Southern District of New York, entered on January 11, 1979, and July 3, 1979, by Judge Robert W. Sweet, dismissing her complaint, which had been instituted on her behalf by Mr. Crescenzi, claiming that the defendants conspired in violation of 42 U.S.C. §1983 and §1985 as well as of other federal statutes, to violate her First Amendment, Due Process, and Thirteenth Amendment rights in having appellee Justice P. Raymond Sirignano of the New York State Supreme Court, Westchester County, appoint appellee Bartholomew as conservator of her estate pursuant to N.Y. Mental Hygiene Law, Arts. 77, 78, 79 (McKinney's 1978). Appellant's principal claim is that the use of services and testimony of licensed psychiatrists to determine whether a conservator was needed violated her right under the Establishment Clause to free exercise of conscience since it amounted to "soul-curing" and "semantic trickery," subjecting her to the "rites of a cult or religion," as a result of which she has been placed in involuntary servitude and deprived of her property without due process of law. It is claimed that appellees, through ex parte procedures, proceeded against appellant by "gross chicanery." Injunctive and declaratory relief plus $1 million damages are sought.

A careful review of the record, briefs and oral argument disclose that the claim is frivolous and completely without merit. The judicial use of psychiatric examinations and opinion in determining a person's mental fitness, capacity and need for treatment or protective and institutional care is well recognized and widely accepted, provided the subject is accorded due process. See, e.g., *Parham v. J.R.*, ____U.S.____ 47 U.S.L.W. 4740 (June 20, 1979). Appellant's due process rights were fully protected by the appellees in the present case in accordance with Article 77 of the New York Mental Hygiene Law. Personal notice of the proposal for appointment of a conservator was given to appellant and her closest relatives. John M. Perone, Esq., was appointed as guardian ad litem to protect her interests.

Appendix I

Appellant was examined by a *court-appointed* psychiatrist, appellant [sic] Dr. Harry Moorhead, who confirmed the view of Dr. Stuart Pines, that appellant is suffering from a deteriorating mental condition rendering her unable to care for her personal property and necessitating care in a nursing facility. After holding evidentiary hearings in which witnesses were examined and cross-examined, the state court (per Justice Sirignano) found that the need for a conservator was established "by clear and convincing proof." He then appointed appellant Bartholomew, her son-in-law, as conservator, and approved the placement of appellant in a Peekskill nursing home.

The orders and judgments of the district court are affirmed, substantially for the reasons stated by Judge Sweet in his opinions dated January 11, 1979, May 4, 1979, and June 12, 1979. In view of the frivolousness of this proceeding, the reckless misuse of process by appellant's counsel, including his attempted invocation of federal criminal anti-racketeering statutes, 18 U.S.C. §§1951(b)(2), 1961, 1962, 1964, and his intemperate characterization of defendants' conduct as "larcenous tyranny," "semantic trickery," "gross chicanery," "larceny," "larcenous conspiracy," a "pattern of racketeering," and "extortion," all of which deserves reference to the Bar Association's Grievance Committee for appropriate disciplinary action, see Amer. Bar Assn. Code of Judicial Conduct, Canon 3B(3), it is further ordered that double costs shall be assessed against appellant pursuant to F.R.A.P. 38, to be paid by her counsel Gene Crescenzi pursuant to Title 28 U.S.C. §1927. *Acevedo v. I.N.S.*, 538 F.2d 918 (2d Cir. 1976).

s/ Sterry R. Waterman, per wrm
Sterry R. Waterman, U.S.C.J.

s/ Leonard P. Moore
Leonard P. Moore, U.S.C.J.

s/ Walter R. Mansfield
Walter R. Mansfield, U.S.C.J.

APPENDIX II — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DENYING REHEARING FILED MARCH 4, 1980

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the Fourth day of March, one thousand nine hundred and eighty.

Present: HON. STERRY R. WATERMAN, C.J.

HON. LEONARD P. MOORE, C.J.

HON. WALTER R. MANSFIELD, C.J.

Circuit Judges

79-6031

ANNA STANTON GREEN,

Plaintiff-Appellant

v.

ELIOT BARTHOLOMEW, ROBERT KLIPSTEIN P. RAYMOND SIRIGNANO, PHILIP E. PUGSLEY, HARRY MOOREHEAD, JOSEPH CALIFANO, Commissioner of the Department of Health, Education and Welfare, and THE UNITED STATES POST OFFICE and THE NEW YORK BANK FOR SAVINGS,

Defendants-Appellees

Appendix II

A petition for rehearing having been filed herein by counsel for the Appellant-Anna Stanton Green.

Upon consideration thereof, it is

Ordered that said petition be and hereby is DENIED.

s/ A. Daniel Fusaro
A. DANIEL FUSARO,
Clerk

APPENDIX III - ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DENYING SUGGESTION FOR REHEARING FILED MARCH 4, 1980

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the Fourth day of March, one thousand nine hundred and eighty.

79-6031

ANNA STANTON GREEN,

Plaintiff-Appellant

v.

ELIOT BARTHOLOMEW, ROBERT KLIPSTEIN P. RAYMOND SIRIGNANO, PHILIP E. PUGSLEY, HARRY MOOREHEAD, JOSEPH CALIFANO, Commissioner of the Department of Health, Education and Welfare, and THE UNITED STATES POST OFFICE and THE NEW YORK BANK FOR SAVINGS,

Defendants-Appellees

A petition for rehearing containing a suggestion that the action be reheard en banc having been filed herein by counsel for the appellant, and no active judge or judge who was a member of the panel having requested that a vote be taken on said suggestion,

Appendix III

Upon consideration thereof, it is

Ordered that said petition be and hereby is DENIED.

s/ IRVING R. KAUFMAN
Chief Judge

APPENDIX IV — RELEVANT STATUTES

§77.01 Persons for Whom a Conservator of the Property may be Appointed

"The supreme court, and the county courts outside the city of New York, if satisfied by clear and convincing proof of the need therefor, shall have the power to appoint one or more conservators of the property (a) for a resident who has not been judicially declared incompetent and whom by reason of advanced age, illness, infirmity, mental weakness, intemperance, addiction to drugs, or other cause, has suffered substantial impairment of his ability to care for his property or has become unable to provide for himself or others dependent upon him for support, or (b) for a nonresident of the state for whom a conservator of his property, by whatever name designated, has been appointed pursuant to the laws of any other state, territory, or county in which he resides. Such person for whom a conservator is appointed is hereinafter designated as the 'conservatee.'

If the conservatee is a patient in a hospital or school, the officer in charge of such hospital or school and the mental health information service shall have the right to be heard in all phases of the proceedings."

§6521. Definition of practice of medicine

"The practice of the profession of medicine is defined as diagnosing, treating, operating or prescribing for any human disease, pain, injury, deformity or physicial condition."

APPENDIX V - MEMORANDUM TO THE COURT OF APPEALS ON THE EXCLUSIVELY RELIGIOUS AND NON-MEDICAL PRINCIPLES AND PURPOSES OF MENTAL HYGIENE

MEMORANDUM ON THE EXCLUSIVELY RELIGIOUS AND NON-MEDICAL PRINCIPLES AND PURPOSES OF MENTAL HYGIENE

By Norman A. Plotkin D.U.P. (Docteur d'Universite de Paris [Sorbonne])

Note: This memorandum briefly summarizes part of my research into the background of what is called psychiatry, psychology, mental hygiene, and similar names. From the results of this research I selected those notes that would be particularly useful in testimony that I prepared to give on this subject on June 8, 1979, before the Hon. Robert W. Sweet, in the United States District Court for the Southern District of New York, in Green v. Bartholomew, 78 Civ. 3994. Since no testimony was heard there, I have extracted from these notes the following brief quotations and comments to show the exclusively religious and non-medical principles and purposes of "mental hygiene," including its name, aim, concepts, movement, organization, and personnel. This memorandum was prepared at the request of GENE CRESCENZI, attorney for ANNA STANTON GREEN, to support her application for relief in the United States Court of Appeals for the Second Circuit. N.A.P.

PART I - WILLIAM JAMES, PHILOSOPHER OF NATURAL RELIGION

As professor of philosophy at Harvard University, William James acquired world renown for his own philosophic concepts which he always expounded in his lectures and writings. So far from questioning that they were religious concepts, he himself called them "natural religion." These views were widely shared

by many of the clergy here and abroad, who represented a liberal Christian trend that was considered to be modern and enlightened, and necessary to reform what he called "church Christianity." He himself was the son of a Swedenborgian theologian, a follower of a well known trend then. William James's "natural religion" obviously reflects that influence.

William James had studied at German universities, where a subject entitled "religion and psychology" was then a standard field of study, and helped to recreate it here, publishing *Principles of Psychology* in 1890. A dozen years later he delivered a series of lectures at Edinburgh known as the Gifford Lectures on Natural Religion. These were then published, in 1902, as *Varieties of Religious Experience, A Study in Human Nature.* Although this book is now in widespread use in introductory college courses, and is considered a classic, it is unfortunately not usually given any attention for its own evidentiary value as a source of an important trend in American social-religious history, the impact of which is so painfully visible now in the Green and related cases. That James's book has such evidentiary value is demonstrated below.

These brief quotations from *Varieties of Religious* Experience,* with appropriate comments, are the result of examining this book as a social document. Only one conclusion can emerge from such an examination. It is that "mental hygiene," later called "mental health," is the formal institutionalization of "natural religion," and is totally unrelated to medicine, medical concepts, or bona fide medical or "health" practice. It was conceived as part of James's religious exposition that was succinctly summarized in an "Introductory note on the author of *Varieties of Religious Experience*" as follows:

---

* All page references are to the 1936 Modern Library Edition of *Varieties of Religious Experience,* by William James.

Appendix V

> "These lectures, collected in this volume, have since become famous as the standard scientific work on the psychology of the religious impulse." — p.v.

1. James's "Religion and Neurology."

Lecture I is entitled "Religion and Neurology." But "neurology" as used by William James here obviously has no medical meaning. It was used purely as positivist or positivist-influenced jargon, which was then in greater supply than what is now considered to be bona fide neurology. James coupled the word "neurology" quite properly, for him, with religion, just as he properly coupled "psychology" with the religious impulse, because he uses both terms "neurology" and "psychology" to express religious concepts.

In the same way, and for the same reason, he uses other words that although they might appear to be "medical" in another context, are clearly religious terms here:

> "Few of us are not in some way infirm, or even diseased; and our very infirmities help us unexpectedly. In the psychopathic temperament we have the emotionality which is the *sine qua non* of moral perception; . . ." p. 26.

William James is obviously preaching religion here, not medicine. Yet it is by taking similar semantic liberties that current practices no more medical than James's use of "neurology," "infirm," or "diseased," succeed in their deceptive claim to be "medical." In 1966, for example, the Court of Appeals of New York heard an appeal from a group of M.D.'s, constituting a branch of the American Psychiatric Association; they called "neuropsychiatric" their own practice of psychoanalysis, thus claiming legal monopoly privilege for it as

"medical practice." (See *Nassau Neuropsychiatric Society Inc. v. Adelphia Univ. et al.*, 275 N.Y.S. 2d 511; 18 N.Y. 2d 370. Notwithstanding that dismissal of their claim was affirmed, and that official definition limits "practice of medicine" to "physical condition" (and that Freud called psychoanalysis "pastoral") such "medical" semantic deception persists, as the present litigation shows.

2. *James's Religion of Healthy-Mindedness, Mind-Cure, and Mental Hygiene.*

Lectures IV and V are entitled "The Religion of Healthy-Mindedness." In these lectures, William James defines and explains "healthy-mindedness," "mind-cure" (also called the religion of mind-cure), and "mental hygiene" in the most explicit religious or theological language possible:

> ". . .how impossible it is not to class mind-cure as primarily a religious movement. Its doctrine of the oneness of our life with God's life is in fact quite indistinguishable from an interpretation of Christ's message which in these very Gifford lectures has been defended by some of your very ablest Scottish religious philosophers." p. 104.
>
> ". . . mind-cure has developed a living system of mental hygiene* which may well claim to have

* Here is the very term, "mental hygiene," that appears a half dozen years later in the mental hygiene movement founded with William James's influential and financial support at the residence of Anson Phelps Stokes, Episcopal chaplain of Yale University. A few years after that this movement resulted in a consolidated executive department in the State of New York named "Mental Hygiene" with a newly enacted "Mental Hygiene Law" as its authority.

> thrown all previous literature of the *Diatek der Seele* * into the shade." p. 105.
>
> "The ideas of Christian churches are not efficacious in the therapeutic direction today . . .[James disagrees that popular Christianity] has it all there in mental therapeutics, and has it in its best form . . . popular Christianity does absolutely *nothing*, or did nothing until mind-cure came to the rescue." p. 110-111.
>
> "The mind-cure with its gospel of healthy-mindedness has come as a revelation to many whose hearts the church Christianity had left hardened." p. 112.

It is impossible to state more plainly that healthy-mindedness, mind-cure, mental therapeutics, soul dietetics, and mental hygiene are all terms and concepts of religion, not of medicine. This religion, professed by William James, was shortly to be institutionalized first by a "movement," and soon afterward by legislative enactment.

3. *James's "Sick Soul"*

Lectures VI and VII are entitled "The Sick Soul." In these lectures William James defines and explains the "sick soul" and how it contrasts with "healthy-mindedness." Here is the same combination of the biological-medical term "sick" with a religious term, "soul." But here the device is so easily penetrated that the briefest quotation will suffice:

---

* This may be translated as *soul dietetics*, or a balanced diet for the soul. This well illustrates how biological health concepts that were then new discoveries were borrowed to support what were supposed to be newly discovered concepts of religion.

Appendix V

"Evil is a disease." p. 125.

Despite the medical-sounding term "disease," the meaning here is clearly religious, or theological, and could not possibly be given a bona fide medical meaning.

It is just as impossible to call "sick souls" anything but a religious or theological epithet. It is inconceivable to construe this term as a medical diagnosis. The same is just as true for what James contrasts as "sick souls" and "healthy mindedness, in the following passage:

> ". . . we must address ourselves to the unpleasant task of hearing what the sick souls, as we may call them in contrast to the healthy-minded, have to say . . ." p. 133.

But this obvious metaphorical usage in William James's writings was soon to be transformed into a semantic duplicity institutionalized in law, in which religious essence was covered over with what was called literally, but deceptively, hygiene, health, and medical practice.

4. *James's "Mental Hygiene" Religious Concepts Summarized*

An examination of William James's philosophical exposition in his famous book thus shows that he openly advocated natural religion in the form of healthy mindedness, mind-cure, mental therapeutics, soul dietetics, and mental hygiene in order to cure "sick soul." (This general concept was also sometimes called "neurology.")

These religious uses by James of a number of medical-sounding terms are, of course, consistent with his own background and the historical background of medicine and religion. James first studied medicine at Harvard (although he

never practiced it) before he went abroad to study religion and psychology. Harvard, like all old universities, was originally a church school of divinity and theology. The original three church university disciplines of theology, law, and medicine were regarded merely as separate branches of a common core. And the medicine that James studied had not yet progressed to a much different level.

Moreover, that general trend in theology in which William James emerged as such an eloquent spokeman was also manifested then in other ways that expressly sought to retain and revive the old religion-medicine bond. This was distinctly expressed in the *Encyclopedia of Religion and Ethics.** Significantly, this encyclopedia began publication in 1908, the same year that the "Mental Hygiene" movement was officially founded. The article in this encyclopedia entitled "Psychotherapeutics," by W.H. Rivers, President of the Anthropological Association of the British Association, states that:

> "The great interest of modern trends in psychotherapeutics is that at this late stage of social evolution they seem to be again bringing religion and medicine into that intimate relation to one another that existed in their early history."

PART II - THE MOVEMENT CALLED "MENTAL HYGIENE"

A half dozen years after the publication of *Varieties of Religious Experience,* the mental hygiene movement was founded, with William James leading the way, and even contributing the first thousand dollars. In view of his writings

---

* *Encyclopedia of Religion and Ethics,* Charles Scribner, New York and Edinburgh, 1908-1927.

this comes as no surprise. Its larger significance should not be overlooked. Like Swedenborg's "New Jerusalem" movement, James's "natural religion," or "mental hygiene," was to spread far and wide. This development was neither unintended nor unexpected, but openly planned, and well-financed.

In scarcely a decade this mental hygiene movement spread over the United States, and internationally. "Mental hygiene" or "mental health" became a government concern. Its attainment was made an official goal, legislatively enacted almost everywhere. It was officially supported by a vast ever growing, heavily funded bureaucracy, operating through a network of mental health agencies, bureaus, offices, departments, centers, clinics, church social services, and so forth.

The mental hygiene movement required "medical" cover in order to obtain government support and a more popular image (since James's natural religion appealed only to intellectuals); but the movement never lost its essentially Jamesian concepts and purposes. In view of its origins, it is not surprising that this movement and its goal bear a striking resemblance in concepts and language to what William James so eloquently set forth in *Varieties of Religious Experience.* Aside from a few semantic modifications, and the omission of the more overt references to religion, the resemblance is total.

But the latter omission and semantic changes signify only this movement's accomodation to a "public health" image, the key to its success. Thus "sick soul," as the opposite of "healthy mindedness" was replaced by "mental illness" as the opposite of "mental health;" and "mind-cure" was replaced by the more complex-sounding "mental therapy" and "mental hygiene." So this mental hygiene movement promoted mental health through mental (or psycho-) therapy in order to cure mental illness (this new word was never explicitly defined, but obviously implied the opposite of mental health). But it is otherwise essentially indistinguishable for William James's "natural religion."

Appendix V

1. *James and Beers and the Movement's Founding*

The route from William James to the mental hygiene movement was short and direct. The link was Clifford Whittingham Beers, official founder of the movement. After William James read the manuscript of Beers's meager autobiographical account, *The Mind That Found Itself,* and praised it, it was soon published. Simultaneously, the first Mental Hygiene association was founded in 1908, at Yale, and ever since Beers's book has been its "revered" promotional piece, and always kept in print, as (as indeed it is called) its "bible."

It would be hard to find two more dissimilar men than James and Beers collaborating in founding any movement. James was then a world famous intellectual, approaching the end of his life. Beers was a young man whose only distinction then, if it may be called that, was that he had jumped out of a window, for unexplained causes, breaking his ankles, and was then confined for a time in a sanitarium for what was then called "lunacy." This book by Beers (he only wrote one) is his account of what happened to him then, and supposedly of his thoughts. He wrote it after he recovered, or was reformed. Why the influential James caused it to be published is an interesting, although perhaps easily answered, question.

Although he had had the benefit of a Yale undergraduate education, Beers was no intellectual. He was a business man, and rather a Bible-thumper (the combination was not uncommon then) judging by this concluding passage of his book:

> "What have I to do with thee, Jesus,
> Thou Son of the Most High God, that
> Thou torment me not."

The passage is taken verbatim from the Gospel According to St. Mark, 5:3-7, St. James Version. Perhaps it was this feature that

was so appealing to James. Perhaps, too, the fact that (according to a biographical account) James himself once had suicidal thoughts, as a young man, explains why he so warmly embraced Beers's cause.

But the hard fact remains that Beers was shortly to attain distinction as a big money raiser, obtaining ultimately millions of dollars for his Mental Health Association and movement. Among the first uses of this money was the financing of the first office and staff of what was then the American Medico-Psychological Association, re-named within a few years as the American Psychiatric Association. This Association rewarded Beers for the money by making him an honorary member — its singular non-physician, non-psychiatrist member then.

When Beers died in his mid-sixties, far from home, in the midst of World War II, he was neither a soldier nor a war casualty. (He died in a fashionable "short term" psychiatric hospital known for its alcoholic ward.) But among the fruits of that war and its aftermath were Congressional appropriations for "mental health" of a size that vastly exceeded even Beers's wildest dreams.

2. *Seven Decades of "Mental Hygiene."*

In the seven decades that have passed since the founding of the mental hygiene movement, prominent clergymen have always been its most articulate and visible advocates. These include: Anson Phelps Stokes, first as Episcopal Chaplain of Yale University, and later as Massachusetts Episcopal Bishop; William Lawrence, Massachusetts Episcopal Bishop; James Cardinal Gibbons, Roman Catholic Archbishop of Baltimore; Harry Emerson Fosdick, the interdenominational Riverside Church pastor and Union Theological Seminary professor; and

Felix Adler*, founder and head of the Ethical Culture Society. But its only physician-supporters of note are those practicing the non-medicine of psychiatry.

The mental hygiene movement even defines its "helping professions" to include the clergy, along with law enforcement personnel** — i.e. "practitioners" of social behavioral control. None of its leaders have ever been prominent in any medical or scientific work, such as cardiology. But at least one attained some political prominence: Wilbur Cross, who for years was one of the Mental Health Association's leaders, while professor of English literature at Yale University (Yale's tie to the movement persisted), was elected Governor of Connecticut in 1930.

While Governor of Connecticut, the former Yale literature professor edited *Twenty-Five Years After****, a collection of letters promoting mental hygiene principles and purposes. They are similar to those in the "Supplement" to the *Mind That Found Itself* (that "Supplement," occasionally changed from edition to edition, constitutes about half of Beers's book). In these letters, chosen as promotional pieces,"mental hygiene" is revealed as having the same religious purpose found in William James's writings, although much less eloquently articulated. One supporter said it plainly, if crudely, twenty-five years after, as follows:

---

* Felix Adler as a young man, was sent to Germany, by his father, then New York's Temple Emanu-El's eminent rabbi, for a higher education to prepare him to succeed to that pulpit (a succession then virtually taken for granted).

** See: Nina Ridenour, *Mental Health in the United States, A Fifty Year History*, Harvard University Press, Cambridge, Mass., 1961. p. 82.

*** *Twenty-Five Years After*, edited by Wilbur L. Cross, Doubleday, Garden City, N.Y. 1934.

Appendix V

> "How quickly the Gospel of Mental Hygiene has spread!"*

That the spreading of this gospel is what "mental hygiene" is all about is undeniable. And that it is succeeding can easily be measured financially, as well as in other practical ways. Just one organizational component of this movement, the American Psychiatric Association, boasts, in its current directory, at p. ix, that:

> "Over the course of a decade, the Association's budget has grown from less than $100,000 to over $6,000,000 . . ."

So William James's natural religion, larded with medical-sounding terms, including "mental hygiene," was expanded into Beers's big money gospeleering "mental hygiene" movement. Although semantically accomodated to a "public health" image to acquire police power and public financing, the "mental hygiene" or "mental health" establishment requires little probing to reveal its true religious and theological nature, and to show that it is in no way a bona fide medical or health practice.

New York, N.Y., July 30, 1979

s/ Norman A. Plotkin
NORMAN A. PLOTKIN

---

* *Ibid.*, p. 356.

Supreme Court, U. S.
FILED
AUG 1 1980
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No. 80-0001

In The

Supreme Court of the United States

October Term, 1980

ANNA STANTON GREEN,

Petitioner,

vs.

ELIOT BARTHOLOMEW, ROBERT KLIPSTEIN, P. RAYMOND SIRIGNANO, PHILIP E. PUGSLEY, HARRY MOOREHEAD, JOSEPH CALIFANO, COMMISSIONER OF THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, AND THE UNITED STATES POST OFFICE, AND THE NEW YORK BANK FOR SAVINGS,

Respondents.

On Petition For a Writ of Certiorari to the United States Court of Appeals For the Second Circuit

BRIEF FOR RESPONDENTS ELIOT BARTHOLOMEW AND ROBERT KLIPSTEIN IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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BRIEF FOR RESPONDENTS ELIOT BARTHOLOMEW AND ROBERT KLIPSTEIN IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Was it a violation of the constitutional rights of Mrs. Green, the petitioner, under the First, Thirteenth or Fourteenth Amendments, for the Supreme Court of Westchester County, New York, to consider competent psychiatric testimony in determining whether a conservator was needed?

2. Did the District Court rightly determine (and thus the Court of Appeals rightly affirm) that the conservatorship proceeding comported with the due process requirements of the Fourteenth Amendment?

3. Did the conduct of respondents Bartholomew and Klipstein, in seeking the appointment of a conservator for Mrs. Green, constitute a violation of 42 U.S.C. §§1983 or 1985, the Civil Rights Law, or of 18 U.S.C. §1961, *et seq.*, the Racketeer Influenced and Corrupt Organizations Chapter of the Organized Crime Control Act of 1970 ("RICO")?

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COUNTERSTATEMENT OF THE CASE

Fact Statement[1]

This brief is submitted on behalf of respondents Eliot Bartholomew and Robert Klipstein, Esq. Bartholomew, a seventy-six year old retired businessman, was appointed Mrs. Green's conservator by the Supreme Court, Westchester County ("state court") on February 10, 1978 (Sirignano Judgt.; 40a-41a). Klipstein, as a partner in the law firm of Danziger, Bangser & Klipstein, represented Bartholomew in the conservatorship proceedings in state court (Klipstein Answer, par. 10; 164a-165a).

Background of the Dispute

Mrs. Green is ninety-four years of age. Her daughter (now deceased) was married to Bartholomew (Bart. Aff., Oct. 16, 1978; 58a).

For many years prior to the summer of 1977, Mrs. Green lived alone in a slum neighborhood. With the passage of years, she suffered badly impaired eyesight and became physically feeble (Moorehead psychiatric exam.; 120a-122a). Notwithstanding his wife's death in 1967, Bartholomew continued to minister to Mrs. Green's shopping needs, to prepare her tax returns, and to take care of her banking and financial needs. On occasion, he was accompanied by Arthur Grundig, a nephew of Mrs. Green (Bart. Aff., Oct. 16, 1978, 61a-62a; Bart. Aff., Dec. 16, 1977, 112a-113a).

---

1. The appendix in the United States Court of Appeals for the Second Circuit has, at petitioner's request, been certified and delivered to this Court. Frequent references are made in this Fact Statement to affidavits of respondents Bartholomew and Moorehead included in the appendix. Such references will be followed by the date of the affidavit and the appendix page on which the appropriate portion appears, thus: "Bart. Aff., Oct. 16, 1978, 61a." Respondent Sirignano rendered decisions dated January 27, 1978 and June 29, 1978, and a judgment dated February 10, 1978. These will be referred to as "Decision No. 1," "Decision No. 2," and "Judgt.", respectively.

In the summer of 1977, Mrs. Green injured herself. She telephoned Bartholomew for help and he placed her in a hospital (Bart. Aff., Oct. 16, 1978; 61a). When Bartholomew visited Mrs. Green's apartment a day or two later, he found that it had been stripped by vandals; it thus became impossible for Mrs. Green to return to it (*id.*, 62a).

Upon her release from the hospital, Bartholomew placed Mrs. Green in the family home of neighbors. After two weeks, he was advised that she was too burdensome to be kept on (Bart. Aff., Oct. 16, 1978; 62a). Mrs. Green herself refused to enter a nursing home; so on October 6, 1977 Bartholomew took her into his own one-bedroom apartment (*id.*). Because these arrangements became increasingly intolerable, Bartholomew petitioned the state court for his appointment as Mrs. Green's conservator, in accordance with Article 77 of the New York State Mental Hygiene Law [Bart. Rule 9(g) statement; 50a].

Proceedings in State Court

The state court petition (reproduced in full at 77a-83a) was supported by the affidavit of a psychiatrist who, in addition to recording his own opinion that Mrs. Green was in need of a conservator, set forth also the like opinion of a clinical psychologist, who had also examined Mrs. Green (84a-85a).

By supplemental affidavit (88a), Bartholomew accounted for his previous management of Mrs. Green's assets and waived any commission or other compensation, if appointed (Bart. Aff., Dec. 5, 1977, pars. 2 and 5; 88a, 90a).

The order to show cause and petition were presented to respondent Sirignano, the state court judge assigned to consider such applications. In accordance with the requirement of the Mental Hygiene Law and the order to show cause, due notice of the commencement of the proceeding was served upon Mrs. Green and all of her known kin (Order to

Show Cause, Bart. Aff., Oct. 16, 1978, par. 11; 63a). The order to show cause also named John M. Perone, Esq., a lawyer, as guardian *ad litem* for Mrs. Green (Order, 75a-76a).

Mr. Perone's sworn report (92a, *et seq.*) corroborated the observations of Bartholomew and the medical and psychological opinions referred to; reviewed and approved Bartholomew's account for Mrs. Green's funds; and recommended the appointment of Bartholomew as Mrs. Green's conservator (*id.*, 95a-100a). He also reported that she did not herself wish to attend the hearing (*id.*, 99a).

Following notice of the proceeding, Grundig appeared and by affidavit declared that he (Grundig) should be appointed conservator instead (101a-102a). An issue having thus been created, Justice Sirignano deferred action on the petition (117a, *et seq.*), and appointed respondent Harry Moorehead, M.D., a psychiatrist practicing in White Plains, as an independent expert to examine Mrs. Green:

> ". . . to assist [the state court] in determining whether a Conservator of the property of [Mrs. Green] should be appointed . . ." (*id.*).

In accordance with that assignment, Moorehead examined Mrs. Green (Moorehead report, 120a). He also consulted with Stuart Pines, M.D., a physician who had recently examined Mrs. Green (*id.*). Dr. Moorehead found her to be:

> "Suffering from a deteriorating mental condition which comes about as a result of a cerebral atrophy and diminished circulation to the brain. This process has resulted in mental confusion, misinterpretation of environment, with the development of auditory and visual hallucinations . . . [T]his condition is progressive and would appear to have accelerated in recent months" (*id.*, 122a).

He concluded that she was not capable of caring for her personal property, and recommended that she be cared for in a nursing facility (*id.*).

After a further plenary hearing (37a), Justice Sirignano decided that need for a conservator had been established "by clear and convincing proof" (*id.*). By Decision No. 1, he appointed Bartholomew as conservator upon his filing a bond in a sum in excess of value of the assets involved, and directed that the judgment thereon provide for Mrs. Green to continue in the nursing home in which the state court had already approved her placement, until further order of the court (37a-38a). Judgment was duly entered (39a-41a), Bartholomew having bonded his conservatorship as directed (354a-355a); Mrs. Green's bank accounts were duly changed by Bartholomew into conservatorship accounts [Bart. 9(g) statement, par. 32; 55a]; and he notified the Social Security Administration to send Mrs. Green's benefit checks to him as her conservator [Bart Aff., Oct. 16, 1978, par. 5(e) and (f); 60a]. Later, on June 15, 1978, Bartholomew and Klipstein filed Mrs. Green's will with respondent Philip E. Pugsley, the clerk of the Surrogate's Court, Westchester County, acting in accordance with provisions and rulings under New York law which mandate or encourage a conservator or committee to file the will of a ward with the clerk of the Surrogate's Court for safekeeping (Klipstein Aff., Oct. 3, 1978; 190a).

Since assuming the responsibility of conservator, Bartholomew has duly provided for the maintenance, support and personal well-being of Mrs. Green; and has duly filed the annual accounting for 1978 required of him by the Mental Hygiene Law with respect to his stewardship (279a).[2] He has maintained Mrs. Green in the nursing home designated by Justice Sirignano, at which residence she is cared for in comfort

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2. Subsequent to the issuance of the opinion below, Bartholomew filed his annual accounting for 1979.

and given unrestricted access by visit, telephone and mail to any person with whom she wishes to have concourse (Magi Aff., June 5, 1979, *passim;* 283a).

At some point following entry of the judgment, Grundig apparently introduced Mrs. Green to Gene Crescenzi, Esq., her lawyer of record in all federal court proceedings (Bart. Aff., Oct. 16, 1978, par. 19; 66a). With Mrs. Green's alleged support, her attorney procured the issuance of an order to show cause directing a new hearing as to whether Bartholomew's conservatorship should continue (126a). As a preliminary to the new hearing, Justice Sirignano requested Moorehead once again to examine Mrs. Green; that reexamination occurred June 24, 1978 (Decision No. 2; 45a).

The new hearing occurred June 27, 1978. Moorehead appeared and testified, and was cross-examined by Mrs. Green's attorney. Mrs. Green appeared and testified under examination by her attorney; she was further examined by both the court and Klipstein. Bartholomew also testified, and was cross-examined by Mrs. Green's attorney (Bart. Aff., Oct. 16, 1978, par. 23; 67a). No proofs of any kind, medical, psychiatric or otherwise, were tendered on Mrs. Green's behalf, other than her own testimony.

On June 29, 1978, Justice Sirignano issued Decision No. 2, denying the application in its entirety. He commented on Mrs. Green's own demonstrated lack of comprehension at the hearing; and affirmatively determined "that the Conservatee is still unable to care for herself and her property, and, accordingly, denie[d] the application to discharge the Conservator upon that ground" (46a).

Mrs. Green's attorney filed a notice of appeal to the Appellate Division of the New York Supreme Court, Second Department; but permitted that appeal to lapse for want of prosecution. Instead, on August 25, 1978, he filed the complaint in the instant action and requested issuance of the summons (District Court Docket Entry, Aa).

The Proceedings in District Court

The complaint and amended complaint charge that the respondents united in a conspiracy, by the use of psychiatric testimony, to force Mrs. Green to submit to a "religion or cult" — a "confessional faith" in violation of the First Amendment; that the determination of the need for a conservator in reliance upon any psychiatric opinion constitutes "involuntary servitude" in violation of the Thirteenth and Fourteenth Amendments, and that the court-ordered management of her property by a bonded conservator constitutes an unconstitutional deprivation thereof. Such conduct was claimed to constitute violation of 42 U.S.C. §§1983 and 1985. The claim was also raised that such conduct constituted racketeering in violation of RICO. A million dollars in damages, as well as permanent injunctions and restraints are demanded (Complaint and Amended Complaint, *passim,* 142a; 1a).

Bartholomew and Klipstein moved for summary judgment and dismissal on the pleadings.[3]

United States District Judge Robert W. Sweet rendered his opinion on January 11, 1979, granting the motions of all moving parties to dismiss and for summary judgment (Supplemental Appendix VI to petition; 211a). He held RICO inapplicable to all defendants (*id.*). As respects Bartholomew and Klipstein, he held that neither of them acted under color of state law in respect of the application for a conservatorship (*id.*). He found that, although Bartholomew was acting under color of law as an officer of the court after his appointment as conservator, Mrs. Green had failed to make any showing that she "suffered a loss of any right, privilege or immunity without due process of law." (*id.*). He found the Mental Hygiene Law to be constitutional as applied (*id.*).

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3. All parties except Moorehead moved at the same time for like relief. Moorehead made a similar motion at a later date.

Some months later, Judge Sweet issued a second opinion (Supplemental Appendix VIII to petition; 222a), granting Dr. Moorehead's motion for summary judgment. In his opinion, Judge Sweet declared:

> "The court finds that psychiatry is a bona fide aspect of the medical profession" (224a).

In both opinions, the court held that 18 U.S.C. §1961 had no applicability, and that no conspiracy had been shown to exist to deprive Mrs. Green of equal protection of the law. Judgment was entered July 3, 1979 (Supplemental Appendix X to petition). Appeal to the United States Court of Appeals, Second Circuit, followed. That court unanimously affirmed, *per curiam,* labeling the appeal as "frivolous and completely without merit" (Appendix I to petition; hereinafter "the opinion below"). Double costs were directed to be paid by petitioner's counsel, whose conduct was declared by the Court of Appeals to warrant disciplinary review. An application for rehearing, and a suggestion for *en banc* consideration, likewise met with unanimous rejection.

In seeking issuance of a writ of certiorari, accusation has also been leveled by petitioner (or her counsel) against the judges of the Court of Appeals, who are claimed to have "undeniably . . . demonstrated their own personal bias and prejudice" (petition, p. 14).

REASONS FOR DENYING THE WRIT

I.

The petition presents no issue suitable for review by this Court.

The principal contention of the petition is that psychiatry is not a bona fide medical practice, but a cult or religion (petition, p. 12); and that the employment of impartial psychiatric testimony by a state judge in passing upon a conservatorship petition was tantamount to the imposition of a religion upon her in violation of the First Amendment.

This is nonsense.

Moreover, as the procedural history of this litigation shows (*see* Statement of Facts, *supra*; and see the opinion of the Court of Appeals, Second Circuit, set forth at petition, Appendix I), petitioner has been accorded scrupulous conformity with the procedural requirements for a determination of the need for a conservator (New York Mental Hygiene Law, Article 77, *passim*); and she has, as well, been accorded repeated opportunities for hearing, review, rehearing, the testing of collateral issues, *pendente lite* relief, appellate review, and rehearing of appellate review.

We respectfully submit that, on any reasoned analysis by even the most sceptical and impartial of reviewing authorities, no grounds appear which should invoke the discretionary writ of this Court. The petition refers to no conflict between the opinion below and any decision rendered in any other court, federal or state. Nor is there any reference made to recognized authority in support of the claim that the use of psychiatric opinion to assist a court in determining mental status constitutes involuntary religious practice.[4]

4. The contention that conservatorship constitutes "involuntary servitude" in violation of the Thirteenth Amendment, as suggested by the petition, is simply theatre of the absurd.

The petition takes issue with the reference made by the Court of Appeals to the opinion in *Parham v. J.R.*, ___U.S.___, 99 S. Ct. 2493, 61 L. Ed. 2d 101 (1979). The contention is made (petition, pp. 9-10) that *Parham* "is completely irrelevant." But *Parham* is obviously relevant; since it is a case in which, as in many others, the Supreme Court has expressly identified the practice of psychiatry as a legitimate branch of medical science, and licensed psychiatrists as experts on mental health and mental illness.

In *Parham* the Court was confronted with a class action challenging, on due process grounds, Georgia's procedures for the commitment of minors to state mental institutions. While minors, to be sure, are not involved in the case at bar, all nine Justices of this Court in *Parham* explicitly recognized the validity of the role of psychiatrists and other mental health professionals in assisting judicial and other authorities to reach determinations as to mental condition. Indeed, the majority opinion is replete with references to the value of psychiatric opinion in such fact-finding.

Nor were *Parham* and its companion, *Secretary of Public Welfare of Pennsylvania v. Institutionalized Juveniles*, ___U.S.___, 99 S. Ct. 2523, 61 L. Ed. 2d 142 (1979), the only opinions issued by this Court in 1979 which gave consideration to the value of psychiatrists in assessing mental condition. In *Addington v. Texas*, 441 U.S. 418, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979), the Court reviewed the measure of proof required to support the commitment of the appellant to a state mental institution. And there, as in *Parham* and *Institutionalized Juveniles*, a unanimous Court (Justice Powell abstaining) acknowledged (a) the existence of mental illness; (b) the necessity, arising in mental condition, for the commitment of persons to institutions for care or treatment;[5] and (c) the

5. It should be noted that treatment of Mrs. Green was not involved here. No psychiatrist treated her; all that was involved was the testimony of a court-appointed psychiatrist, respondent Moorehead, based upon his interviews with Mrs. Green. *Cf., Rogers v. Okin*, 478 F. Supp. 1342 (D. Mass. 1979).

necessity of mental health professionals for the expression of opinion on mental condition:

> "Whether the individual is mentally ill and dangerous to either himself or others and is in need of confined therapy turns on the meaning of the facts which must be interpreted by expert psychiatrists and psychologists." 441 U.S. at 429.

Indeed, as the Chief Justice observed in *Addington,* the process of psychiatric diagnosis is so difficult for a "trained psychiatrist" that it may often lie beyond the capability of "even a trained judge" to achieve without the help of psychiatric opinion. *Id.,* at 430.

We entertain no doubt that, with a modicum of effort, we could adduce opinions from the highest court of every state and from each United States Court of Appeals, in which explicit recognition has recently been given to the viability of competent and impartial psychiatric testimony as a tool in making decisions involving mental condition. If there has never been a case in which an effort was made to equate such assistance to (i) witchcraft; (ii) commitment to involuntary servitude; or (iii) racketeering, it is because so far-fetched a set of contentions has never crossed the mind of counsel before.

Passing reference is made in the petition [Questions Presented, No. 2(b)] to violation of the Fourteenth Amendment. No other expression has been given by the petition to the charge that Mrs. Green was denied the full panoply of procedural protections to which she was entitled before appointment of a conservator, and in the hearing which reaffirmed the continuing necessity for one. The opinion below reviewed those procedural safeguards, which included, among other things, the appointment of a guardian *ad litem,* notice to relatives, the right to appear, examine and cross-examine, representation by

counsel of petitioner's choice, determinations by a "clear and convincing" standard, and the posting of bond. There can thus be no such due process issue.

* * *

A particularly ugly feature of the petition is its scandalous charge that Circuit Judges Waterman, Moore and Mansfield, who issued the opinion below, were operating upon "personal bias and prejudice" (petition, p. 14). The bases given for such charges are that (i) the Court of Appeals refused to permit petitioner's counsel to supplement the appendix with materials not a part of the record on appeal; (ii) the Court of Appeals applied *Parham* "ex post facto," and (iii) the Court of Appeals imposed double costs upon petitioner's counsel and urged the referral of his conduct to an appropriate grievance mechanism. These rulings are said to constitute departures from accepted judicial practice (*id.*).

We deplore these charges. We point out that, in the course of this wholly frivolous and outrageously prolonged litigation, petitioner's counsel has, on the record, charged virtually every judge before whom any aspect of this case was heard, in either state or federal courts, and even some judges before whom it has never appeared, with criminal misconduct or other violations of their oaths of office. Justice Sirignano has been charged with "racketeering"; Presiding Justice Frank A. Gulotta of the Appellate Division of the Supreme Court of New York State, Second Department, has been charged with prejudice in favor of psychiatrists; Hon. Robert W. Sweet, United States District Judge, has been charged with reaching his decisions for reasons of personal friendship; and the panel of the Court of Appeals has been charged with personal bias and prejudice.

We respectfully submit that, with palpably unwarranted charges of that nature on the record before it, the Court of Appeals, in imposing double costs and recommending a review by the Grievance Committee, engaged in a proper and transparently necessary effort to police its own bar.

CONCLUSION

For the reasons hereinabove stated, the petition should be denied.

Respectfully submitted,

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No. 80-0001

Supreme Court, U.S.
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MICHAEL RODAK, JR.

In The

Supreme Court of the United States

October Term, 1980

ANNA STANTON GREEN,

Petitioner,

vs.

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Respondents.

On Petition For a Writ of Certiorari to the United States Court of Appeals For the Second Circuit

BRIEF OF RESPONDENT HARRY MOOREHEAD IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether petitioner has a constitutional right to protection from examination by a court-appointed psychiatrist in connection with a state court proceeding to determine if petitioner is in need of a conservator of her property.

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OPINIONS BELOW

The opinions of the United States District Court of the Southern District of New York, together granting summary judgment to all defendants, are both unreported but are reproduced in petitioner's supplemental appendix (21[p]a, 31[p]a)[1] and are also found in the appendix to the court of appeals (211a, 222a).[2] The court of appeals opinion of unanimous affirmance is unreported and is reproduced in petitioner's appendix (1[p]a). The related and unreported opinions of the Supreme Court of the State of New York, Westchester County, first appointing a conservator of the property of petitioner Anna Stanton Green and then denying removal of the conservator, are omitted from petitioner's appendix and supplemental appendix but are found in the appendix to the court of appeals (37a, 44a).

STATEMENT OF THE CASE

This case challenges the constitutionality of a state court's consideration of psychiatric testimony as an aid in that court's determination of the need for the appointment of a conservator of the property of one of its citizens. Mrs. Green would urge this Court to hear her argument that

> [psychiatry] is not a bona fide medical practice, but a secular version of a religious confessional, or "soul medicine;" and its practitioners, however named, are only a secular version of "soul curers" or "soul physicians."

(Amended Complaint Paragraph 6 at 4a).

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1. References to Petitioner's Appendix in this Court are designated by the letters "[p]a".

2. References to Appellant's Appendix to the Second Circuit Court of Appeals are designated by the letter "a".

Mrs. Green would have this Court entertain her related argument that, when Justice Sirignano of the New York State Supreme Court accepted testimony from a psychiatrist in connection with Justice Sirignano's later appointment of a conservator of her property, the court violated her First Amendment rights to religious choice. Mrs. Green would also present to this Court her suggestions that the New York State Supreme Court's appointment of a conservator of her property led to her involuntary servitude in violation of the Thirteenth Amendment; and finally that the entire procedure in the courts below, both state and federal was violative of the [Fifth and] Fourteenth Amendment's due process guarantees.[3]

Respondent Harry Moorehead is the psychiatrist who was appointed by and reported pursuant to order of Justice Sirignano (117a-119a) and whose medical discipline is questioned by this action.

The district court dismissed the action as to all defendants (39[p]a).

The Second Circuit Court of Appeals affirmed unanimously (1[p]a). Motions for reargument and for reargument *en banc* were denied by the circuit court (4[p]a, 6[p]a), and this petition followed.

A comprehensive factual statement is contained in the brief of respondents Eliot Bartholomew and Robert Klipstein. We will avoid repetition of that statement herein, and adopt its contents by reference. The additional facts set forth below are those which directly bear upon the involvement of respondent Harry Moorehead.

* * *

3. The Green petition presents additional questions regarding her related claims of conspiracy in violation of her civil rights, 42 U.S.C. §§1983 and 1985, and racketeering, 18 U.S.C. §1961. Although all of the foregoing are mentioned in the petition, the only reasons for granting the writ which petitioner presents surround her First Amendment claim.

Harry Moorehead is a physician, duly licensed to practice medicine in the State of New York, and whose specialty is psychiatry (198a). On December 31, 1977, Dr. Moorehead conducted a pyschiatric examination of the petitioner, Anna Stanton Green, pursuant to the December 29, 1977 order (117a-119a) of the Supreme Court of New York State, Westchester County, P. Raymond Sirignano, Justice. Justice Sirignano's order was made in a special proceeding brought by Eliot Bartholomew seeking appointment of a conservator of the property of Mrs. Green in accordance with the provisions of New York State's Mental Hygiene Law §77.01 (8[p]a). Doctor Moorehead's written report (120a-122a) of his findings during the December 31, 1977 examination was presented to Justice Sirignano, in accordance with the December 29, 1977 order (118a).

Thereafter, at a hearing held by Justice Sirignano, on January 27, 1978, Dr. Moorehead testified that in his medical opinion, Mrs. Green was unable to care for herself or her property and that Mrs. Green's attendance at the hearing would be detrimental to her health (194a). At the January 27, 1978 hearing, Dr. Moorehead was cross-examined by John M. Perone, Esq., an attorney duly appointed as Mrs. Green's guardian *ad litem*[4] for the proceedings and by Arthur Grundig, Mrs. Green's nephew (195a).

By judgment dated February 10, 1978, and entered February 14, 1978 (39a-43a) and following Justice Sirignano's January 27, 1978 decision (37a-38a) Eliot Bartholomew was appointed conservator of the property of Anna Stanton Green. The court stated its satisfaction by clear and convincing proof (37a, 40a) in both its opinion and judgment that petitioner was in need for the appointment of a conservator of her property.

Dr. Moorehead's only other contact with the petitioner was after Eliot Bartholomew's appointment as her conservator. On

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4. The guardian's December 14, 1977 report to Justice Sirignano in connection with the special proceeding is found at 92a-100a.

June 24, 1978, Dr. Moorehead again examined Mrs. Green in preparation for a second hearing before Justice Sirignano (45a). The second hearing was held on June 28, 1978 in connection with an application that the conservator be removed (44a). Dr. Moorehead testified on June 28, 1978 that Mrs. Green's condition was unchanged from his prior examination, and that she was still unable to care for herself or her property (45a). At the June 28, 1978 hearing, Dr. Moorehead was cross-examined by Gene Crescenzi, petitioner's attorney (45a).

Further, at the June 28, 1978 hearing, petitioner Anna Stanton Green personally appeared before the court and testified (46a). Justice Sirignano's written opinion and order upon that hearing (44a-47a) reflect that his observations from the bench[5] comport with those of the court-appointed psychiatrist.

Most significantly, at all times Dr. Moorehead acted pursuant to a valid order of the New York State Supreme Court, Westchester County, and there is no suggestion in the record, neither does petitioner argue, to the contrary.

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5. Although the conservatee testified at the hearing that she is capable of managing her property and she had done so prior to the institution of the original conservatorship proceeding, her testimony and demeanor at the hearing showed a lack of understanding of the true nature of the proceeding. She constantly rambled on and interrupted witnesses as well as her own attorney who was questioning the witnesses. She failed to show a comprehension of the nature of the proceeding although she did appear alert.

Sirignano Opinion, June 29, 1978, 46a.

REASONS FOR DENYING THE WRIT

The writ should be denied not merely because the petition fails to present any of the considerations governing review on certiorari set out in Rule 17[6] but because the petition fails to state any serious ground whatsoever upon which review might be considered. *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70 (1955). When faced with the identical arguments as are now brought to this Court, the Second Circuit Court of Appeals said

> In view of the frivolousness of this proceeding, the reckless misuse of process by appellant's counsel, including his attempted invocation of federal criminal anti-racketeering statutes (citations omitted), and his intemperate characterization of defendants' conduct as "larcenous tyranny", "semantic trickery", "gross chicanery", and "extortion", all of which deserves reference to the Bar Association's Grievance Committee for appropriate disciplinary action (citation omitted) it is further ordered that double costs shall be assessed against appellant pursuant to F.R.A.P. 38, to be paid by her counsel Gene Crescenzi, pursuant to Title 28 U.S.C. §1927. Acevedo v. I.N.S., 538 F. 2d 918 (2d Cir. 1976).

Court of Appeals Opinion dated January 8, 1980 (3a).

As is developed below, petitioner's primary argument, that pyschiatry is not medical science but is rather secular religion, is not a serious ground for review, neither is it supported by any decision of this Court. Further, the doctrine of judicial immunity

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6. We also note that petitioner has ignored the accuracy, brevity and clarity requirements of Rule 21.5 and appears to have abandoned presentation of any issues other than those under the First Amendment.

was properly recognized by the courts below to bar any action against respondent Harry Moorehead. Finally, the courts below correctly disposed of the federal statutory claims against respondent Moorehead and the dismissal of those claims ought not be reviewed by this Court.

I.

No serious First Amendment religion argument is presented.

Petitioner argues that psychiatry is not the *bona fide* practice of medicine but is, rather, a religion to which she does not subscribe. Petitioner urges that she presents a case of first impression (Petition at 10), and although petitioner is concededly correct that her claim has never before been presented to this Court *in haec verba (id.),* this Court has repeatedly and consistently approved and even required the use of psychiatric testimony, as it was used by Justice Sirignano, to guard the Fifth and Fourteenth Amendments due process rights of litigants. *See, e.g., Vitek v. Jones,* ____ U.S. ____, 100 S. Ct. 1254 (1980); *Parham v. J.R.,* 442 U.S. 584 (1979); *Addington v. Texas,* 441 U.S. 418 (1979); *Jackson v. Indiana,* 406 U.S. 715 (1972); *Specht v. Patterson,* 386 U.S. 605 (1967); *Baxstrom v. Herold,* 383 U.S. 107 (1966).

The Court recognized in *Addington v. Texas, supra,* that fact findings were merely the first step in making proof in a civil committment proceeding, stating

> [W]hether [a person] is mentally ill . . . turns on the *meaning* of the facts which must be interpreted by expert psychiatrists and psychologists.

441 U.S. at 429.

In *Parham v. J.R.,* 442 U.S. 584 (1979) cited by way of example by the Second Circuit Court of Appeals in the case at

bar[7] (2a), the Court passed upon Georgia's procedures for voluntary admission of children to a state mental hospital. The Court in *Parham,* after quoting favorably from *Addington v. Texas, supra,* observed that

> Although we acknowledge the fallibility of medical and psychiatric diagnosis, see *O'Connor v. Donaldson,* 422 U.S. 563, 584 (1975) (concurring opinion), we do not accept the notion that the shortcomings, of specialists can always be avoided by shifting the decision from a trained specialist using the traditional tools of medical science to an untrained judge or administrative hearing officer after a judicial-type hearing.

442 U.S. at 609.

It is therefore most respectfully submitted that petitioner's reasons for granting the writ, as they purport to raise First Amendment issues surrounding her freedom of religious choice are, indeed, frivolous.

The cases upon which petitioner would rely (Petition at 9), *Reynolds v. United States,* 98 U.S. 148 (1878) (polygamy pursuant to religious tenets may be banned); *Abington School District v. Schempp,* 374 U.S. 203 (1963) (compulsory public school prayers and Bible readings establish religion); *Torcaso v. Watkins,* 367 U.S. 488 (1961) (state may not require those holding public office to aver their belief in the existence of God); *Board of Education v. Barnette,* 319 U.S. 624 (1943) (compulsory public school flag salute impermissible over student religious objection), are inapposite. Further, although the word "religion" is not defined in the Constitution and the breadth of its constitutional meaning must be found elsewhere, *Reynolds v.*

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7. Thus, petitioner's suggestion that the *Parham* holding was given improper retroactive application to her is misplaced.

United States, 98 U.S. 244, 249 (1878), petitioner has not demonstrated any issue of substance which goes beyond matters of intellectual curiosity. *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70 (1955). "[T]his Court does not sit to satisfy a scholarly interest in such issues." *Id.* 394 U.S. at 74.

II.

Moorehead shares Justice Sirignano's judicial immunity as the court-appointed physician.

Even if petitioner's First Amendment argument were substantial, that argument together with every other allegation which she presents against Dr. Moorehead is barred by the doctrine of judicial immunity. *Pierson v. Ray,* 386 U.S. 547 (1967); *Bradley v. Fisher,* 13 Wall. 335 (1872).[8] The cloak of judicial immunity embraces Dr. Moorehead, who was duly appointed by Justice Sirignano's December 29, 1977 order[9] (117a-119a) and whose only contact with the petitioner involved the Westchester County Supreme Court's inquiry into the need

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8. *Phillips v. Singletary,* 350 F. Supp. 297 (D.S.C. 1972) is closely on point. There the court held:

> It is an uncontroverted fact that Dr. Davis, the county physician, examined the plaintiff at the behest of the court. Physicians appointed by the court to conduct examinations of persons under the jurisdiction of that court are an arm of that court and, as such, are, while acting pursuant to and in the scope of such appointment, afforded the same immunities from civil suit as other quasi-judicial officers. Burkes v. Callion, 433 F. 2d 318 (9 Cir. 1970); Bartlett v. Duty, 174 F. Supp. 94 (N.D. Ohio 1959).

Id. 350 F. Supp. at 300.

9. In the recent decision of *Supreme Court of Virginia v. Consumers Union of U.S., Inc.*, 48 U.S.L.W. 4620 (No. 79-198, June 2, 1980), the Court adhered to the rule in *Bradley v. Fisher, supra.*

for a conservator of her property pursuant to Mental Hygiene Law §77.01. *See Butz v. Economou,* 438 U.S. 478 (1978). There is no suggestion that Justice Sirignano was without jurisdiction to appoint Bartholomew conservator or that the Supreme Court, Westchester County acted without its jurisdiction in any way. *See Stump v. Sparkman,* 435 U.S. 349 (1978).

III.

Petitioner's federal statutory claims were properly rejected below.

Moorehead's judicial immunity extends to claims under the Civil Rights Act, 42 U.S.C. §1983. *Pierson v. Ray,* 386 U.S. 547 (1967). *See also, Brooks v. Peters,* 322 F. Supp. 1273, 1276 (E.D. Wisc. 1971).

The district court recognized that nothing of which petitioner would complain even remotely resembles racketeering (33[p]a), and there is nothing in the record to factually support any claim under 18 U.S.C. §1961, *et seq.* The Westchester County Supreme Court's actions pursuant to N.Y. Mental Hygiene Law §77.19 (McKinney 1978) in furtherance of "the preservation, maintenance, and care of the conservatee's income, assets and personal well being," *id.,* are the precise negative of extortion. *United States v. Hyde,* 448 F. 2d 815, 843 (5th Cir. 1971), *cert. denied,* 404 U.S. 1058 (1972).

Therefore, it is respectfully submitted that there are no special nor important reasons for granting certiorari presented by this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: July 31, 1980

Respectfully submitted,

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No. 80-0001

In The

Supreme Court of the United States

October Term, 1980

ANNA STANTON GREEN,

Petitioner,

vs.

ELIOT BARTHOLOMEW, ROBERT KLIPSTEIN, P. RAYMOND SIRIGNANO, PHILIP E. PUGSLEY, HARRY MOOREHEAD, JOSEPH CALIFANO, COMMISSIONER OF THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, AND THE UNITED STATES POST OFFICE, AND THE NEW YORK BANK FOR SAVINGS,

Respondents.

On Petition For a Writ of Certiorari to the United States Court of Appeals For the Second Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

PRELIMINARY STATEMENT

Although the two respondents' briefs now before this Court are in the form of opposition to the petition for the writ of certiorari sought, in actual substance they are arguments for summarily affirming the opinions below whereby summary judgment was entered for them. Obviously, denial of the writ of

certiorari would thus be construed as such summary affirmance, which is what these respondents intend. Therefore, respondents' briefs provide no bona fide reasons for denying the writ.

DIFFERENCE IN QUESTIONS PRESENTED IN PETITION AND IN BRIEFS IN OPPOSITION

Of the four questions presented in the petition,[1] the first and last are ignored in respondents' counterstatements of questions presented, while the second and third are restated in different words with a significantly different constitutional interpretation. The questions presented by respondents disregard petitioner's First Amendment claim, and rely exclusively on what Mr. Justice Jackson called "the vagueness of the due process claim" in *Board of Education v. Barnette,* 319 U.S. 624 at 639 (*see* pp. 10-11 of the petition).

In this respect too, respondents thus provide no bona fide reason for denying the writ, but rather provide a reason for granting it.

REPLY TO COUNTERSTATEMENTS OF THE CASE IN BRIEFS FOR RESPONDENTS[2]

I. Factual Errors of Commission and Omission

A. Mrs. Green's Desire to Testify

Although John M. Perrone, Esq., after his *ex parte* designation by state court as guardian *ad litem* did indeed report, on November 15, 1977, that Mrs. Green (who was then unrepresented by counsel and unable to submit her own affidavit) "has expressed a desire not to attend the hearing scheduled for December 23, 1977" (99a), later, by her own attorney, she swore to a very different statement. In her own affidavit of May 24, 1978, she said:

> "I wish to have an opportunity to appear before the court to give personal expression to the Judge of whatever I say in this affidavit, in addition to reconsider the issues raised at the previous hearing.

> I had no idea in my earlier contacts with the conservator or my guardian *ad litem* of the seriousness of the application heretofore made herein and the consequences thereof." (129a).

She deposed similarly to the United States Court of Appeals in her affidavit of July 14, 1978:

> "I hereby request that I be heard in person and defendants be restrained and enjoined from preventing me from testifying and prosecuting this action" (296a).

On December 7, 1979 she personally attended the oral argument of her appeal, but was not personally heard.

B. Her Removal Not of Her Own Free Will

The version of Mrs. Green's removal given in the brief for respondents Bartholomew and Klipstein (4B&K) is contradicted by her in her affidavit of July 14, 1979:

> "I never came to Peekskill of my own free will, but was tricked into coming by ELIOT BARTHOLOMEW after he deprived me of my own apartment in Manhattan when I was temporarily at a local hospital." (297a).

C. Required Accounting Withheld

Notwithstanding the reported filing of an annual accounting for 1978 (4B&K), and formal request therefor for that year and 1979 by Mrs. Green's attorney, none has been received by her or her attorney. This is also in apparent total disregard of her express desire, stated in her affidavit of July 14, 1979, "to sue to recover" her own money which "they now have" and "prevent defendants from using my money to pay their legal expenses . . ." (295a-296a).

D. Respondent Moorehead's Non-Medical Argument

The brief for respondent Moorehead conceals the record of

his non-medical argument, and his collusion with respondents Bartholomew and Klipstein, mostly by omission.

First this brief adopts by reference the "comprehensive factual statement" in the brief for respondents Bartholomew and Klipstein "to avoid repetition." (2M). This is clearly non-medical argument and collusion.

Then this brief purports to set forth "additional facts" that "directly bear upon the involvement of respondent Harry Moorehead" (*id.*), but omits any substance, which substance includes the following:

(1) Dr. Moorehead testified that he examined Mrs. Green's mind. . . (but not) by touching or contact (but by conversation) . . . (and) could not tell the difference between the mind and the soul." (207a-208a, Crescenzi affirmation of February 8, 1979).

(2) Dr. Moorehead in his sworn affidavit of January 29, 1979, requesting summary judgment in his favor in the district court said:

> "The plaintiff [Mrs. Green] and her attorney have had their day in Court: Mr. Crescenzi has had ample opportunities to question the validity of psychiatry as a medical specialty. The prosecution of the present action against your deponent is vexatious." (353a-354a).

This non-medical argument — actually authoritarian fiat — is what is behind the briefs in opposition to the petition. These respondents thereby show: (1) that they have no substantive (or "medical") argument; and (2) that their only purpose is to silence petitioner, her attorney, and indeed all plain truth.

II. Procedural Misrepresentation

A. Of Claim of Constitutional Invalidity

Petitioner's constitutional claim is completely misrepresented in the briefs for respondents. They say that her

case: (1) "challenges the constitutionality of a state court's consideration of psychiatric testimony . . . for the appointment of a conservator" (1M); and (2) fails to argue against respondents' claim that "at all times Dr. Moorehead acted pursuant to a valid order of the New York Supreme Court." (4M).

Quite to the contrary, she is "seeking declaratory judgment and injunctive relief from Bartholomew and all co-defendants to declare unconstitutional Section 77.01 of the New York Mental Hygiene Law, as written or applied, enjoin their use of it against her." (p. 3 of petition). Her claim is that the entire state court proceeding is constitutionally invalid, including the state court order, and any purported "proofs of any kind, medical, psychiatric, or otherwise" (5B&K) — which is the very stuff of respondents' conspiracy — and that she alone may constitutionally manage her money and her life, free from respondents' governmental restraint.

B. On Personal Bias and Prejudice in Recusatory Application

Recusal was sought (p. 4 of petition) only from Judge Moore ("from the September motion panel, whose bias against Mrs. Green was then so evident") and from Judge Mansfield ("in view of their long records of decisions hostile to any relief from 'psychiatric' oppression").

The only relief sought from State Judge Sirignano is a judgment of constitutional invalidity of the Mental Hygiene statute applied by him. The brief for respondents Bartholomew and Klipstein, by Mr. Blum, falsely states that Judge Sirignano "has been charged with 'racketeering'." (11B&K), and further falsely states that also charged were "virtually every judge before whom any aspect of this case was heard." (*id.*) These sweeping inaccuracies serve as camouflage to cover up and dilute the plain record of Mr. Blum's personal and political ties to the Hon. Robert W. Sweet (p. 3 of petition), which was disclosed in Mr. Blum's own affidavit of September 13, 1979 (345a). Also thereby covered up is membership of State Appeals Judge Gulotta in an American Psychiatric Association branch (312a) while suing on

its behalf in his own court (307a) — a very relevant fact turned up quite incidentally by painstaking research in preparation for Mrs. Green's appeal.

REPLY TO REASONS DENYING THE WRIT IN BRIEFS OF RESPONDENTS

I. Mrs. Green's First Amendment Claim

Although this claim is well-documented in the petition (pp. 6, 10-11 and Appendix V), as well as in the original[3] complaint (142a) and amended complaint (1a) in paragraphs 4-15 thereof, and is based on the most serious scholarly legal and historical research, the briefs for respondents dispose of it with these epithets: "nonsense" (8B&K); "frivolous"; and "intellectual curiosity" (7M-8M) — the latter obviously meant pejoratively or invidiously.

Imposing a closed mind by the police power of the state on behalf of vested interests is precisely what the First Amendment was designed to prohibit; this alone is sufficient reason to accord this protection in this case.

II. Mrs. Green's Thirteenth Amendment Claim

Mr. Blum calls this claim "simply theater of the absurd." (8B&K, footnote).

Yet the very concept of an involuntary "conservatorship" (which surely is the case here) and from which Mrs. Green seeks relief, is deprivation of the essence of civil freedom, namely: to make and enforce contracts, to sue, be parties to suit, give evidence, inherit and bequeath, purchase, lease, sell and convey property, and deprivation thereof is a badge or incident of slavery or involuntary servitude, prohibited by the Thirteenth Amendment. It is undeniable that her estate is burdened thereby, involuntarily, with a servitude. *See* Black's Law Dictionary.

Very early the United States Circuit Court in California in *R.R. Tax Cases,* 13 F. 722 (1882) at 740 held that the Thirteenth Amendment by "the generality of its language makes its

prohibition apply to slavery of white men as well as that of black men; and also to serfage, vassalage . . . " ("vassal" — "a state of dependency" — Black's Law Dictionary). More recently this Court in *Jones v. Mayer Co.*, 392 U.S. 409, 430-432, relied on this very language from the Senate debate on the Amendment: "It would affirmatively secure for all men, whatever their race or color . . . the right to acquire property . . . to go and come at pleasure . . . to enforce rights in the courts . . . to inherit and dispose of property."

Mrs. Green claims these rights.

III. Mrs. Green's Fourteenth Amendment Claim

An *ex parte* order signed by State Judge Sirignano on November 21, 1977 against Mrs. Green (73a-76a) appointed John M. Perrone, Esq., to be her guardian *ad litem*; and without even service on her,[4] it ordered him and other respondents to show cause "why an order should not be made herein dispensing with the attendance of the said ANNA STANTON GREEN at the hearing or trial of the issues herein . . ." (75a). Although the challenged statute does not explicitly provide for it, this procedure is invariably used in the New York courts effecting thereby an irrevocable civil death. For such an order is invariably routinely signed when filed by an attorney, who in fact thereby exercises the only real discretionary power in the entire chain of proceedings thus unleashed.

Although the word "psychiatrist" is not even found in the challenged statute, in fact one is invariably named, thus becoming, as respondent Moorehead has in this case, the accepted authority thereunder. This is true in *every* sense.

First, the psychiatrist as "expert" is effectively the prosecutor (although nominally civil, the proceeding is substantively quasi-criminal,[5] as one by the state). Then the psychiatrist, again as "expert" on the purported specialized "facts" is effectively the jury (the right to a jury in such a proceeding, formally accorded by another statute, is effectively a dead letter).[6]

Mrs. Green has thus effectively been cast into the posture of a criminal defendant, but with no constitutionally required protective procedures, by an *ex parte* order, routinely signed. Thereby respondent Bartholomew gained control of her money, as he planned; and her bank (respondent New York Bank for Savings) not only did not challenge the state court proceeding on her behalf, but explicitly answered her that it "adopts all the arguments on behalf of defendants Bartholomew and Klipstein." (175a).

Respondents and the courts below call this due process. Mrs. Green does not.[7]

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

s/ Gene Crescenzi
Attorney for Petitioner

FOOTNOTES

1. The questions presented in the petition are as follows:

"1. Whether this Court's opinion in *Parham v. J.R.*, 442 U.S. 584 (June 20, 1979) may be lawfully applied by the United States Court of Appeals for the Second Circuit to petitioner, as a 94-year old, alert, able widow, and/or in the circumstances, as petitioner whose complaint was brought and dismissed prior thereto?

2. Whether petitioner has a constitutional right to protection from a state law as written or applied against her by respondents:

(a) To 'examine' or 'test' her *psyche*, whether defined as soul or mind, against her will, or otherwise replace the rule of law by the rule of pseudo-medicine, called 'psychiatry', in violation of the First Amendment;

(b) To take from her, her bank accounts, social security checks, revoked will, and liberty, in violation of the Fourteenth Amendment;

(c) To take from her the earned compensation for her past labor by currently subjecting her to a deprivation of liberty in violation of the Thirteenth and Fourteenth Amendments?

3. Whether petitioner may have redress by an action pursuant to Title 42 U.S.C. §1983, as a deprivation by respondents of her constitutionally secured rights, under color of law, and pursuant to Title 18 U.S.C. §1961, *et seq.* for triple damages from respondents' organized pattern of racketeering against her, under color of law, in violation of the State Penal Code?

4. Whether the opinion of the Court of Appeals for the Second Circuit is made legally invalid by improper procedures including:

(a) Assignment of judges and scheduling of hearing prejudicially by the court's assignment authority;

(b) Irreparably prejudicial striking-out of essential part of appendix of appellant (petitioner), by order of a single judge, the Hon. Walter R. Mansfield, before the appeal was considered;

(c) Disregard by the Hon. Walter R. Mansfield and the Hon. Leonard P. Moore of their obligation under Title 28

U.S.C. §455 to disqualify themselves when their impartiality might reasonably be questioned, as petitioner requested before the hearing of the appeal;

(d) In these circumstances, assessment of double costs to be paid by petitioner's attorney and statement in the opinion that all of this deserves reference to the Bar Association's Grievance Committee for disciplinary action?"

2. Parenthetical page references are as follows: numbers followed by the letter "a" are to Appellant's Appendix and Supplemental Appendix (pages are numbered consecutively in both) in the United States Court of Appeals for the Second Circuit (papers now filed in this Court); numbers followed by "B&K" are to brief for respondents Bartholomew and Klipstein in opposition to petition; numbers followed by "M" are to brief for respondent Moorehead in opposition to petition.

3. These paragraphs are as follows:

"4. The confessional faith, practice, persuasion or belief of defendants complained of herein is a cult that on information and belief constitutes a secular religion of the psyche; its believers or participants talk or confess or cause others to talk or confess to purported expert practitioners of the same, designated as psychiatrists, psychoanalysts, psychotherapists, or by other names, in what is called by them an examination or analysis; said practitioners in exchange for fees paid to them exercise an absolute tyranny through purported 'court orders' by providing official reports as a part of said religion of the psyche that legally disables any designated victim.

5. On information and belief, those who first called themselves psychiatrists took that name in the 19th century from Socrates' *iatros tes psuches,* a healer of the soul (*see* J.T. McNell, *A History of the Cure of Souls,* Harper & Row, 1951, p. 119; T.S. Szasz, *The Myth of Psychotherapy,* Doubleday, 1978, p. 27); they then first established their new profession in German universities as a medical practice, while imposed there by police authority, for political purposes, or for private wrongdoing enforced by the state.

6. On information and belief, the practice of said secular religion of the psyche is not a bona fide medical practice, but a secular version of a religious confessional, or "soul medicine;" and its practitioners, however named, are only a secular version of "soul curers" or "soul Physicians."

7 Plaintiff herein is aggrieved by defendants' practice of said secular religion of the psyche against her, as is more

particularly set forth below, and plaintiff is further aggrieved by defendants' conspiracy therefor, corruptly motivated for the purpose of divesting her of her property, or control thereof, to their profit as set forth below.

8. Plaintiff does not believe in, and has never voluntarily participated in said secular religion of the psyche, or in any of its practices or rites, whether named psychiatric, psychoanalytic, psychotherapeutic, psychological, or similar words.

9. Plaintiff declines to submit to said secular religion of the psyche however designated, and whether or not the practitioners thereof define psyche as soul or as mind; plaintiff declines to submit to any confessional practice thereunder or to any disclosure by her to any of them of her thoughts, or of her assets, reserving all such matters as being exclusively of her own conscience and concern, and in no way the lawful concern of any physician, or practitioner of any religion of the psyche imposed by any attorney-at-law or judge under the color of any law.

10. On information and belief neither the current use of physicians to diagnose the psyche (known as psychiatry), nor a former use of physicians to diagnose witchcraft, are bona fide medical practices, but both are equally the practices of superstitious religion, and the same is abhorrent to plaintiff herein, and is an illegal Inquisition.

11. On information and belief, when the First Amendment was adopted in the 18th century no medical practice then existed that claimed to be based on the psyche.

12. Upon information and belief a medical practice was first claimed to be based on the psyche in the 19th century; a medical label was then invented for this practice by using a Greek and unknown word, psyche; thereby, ancient soul salvationism religion pretended to be a medical practice, and so indispensable to public health that it had to be imposed by law.

13. Plaintiff is aggrieved that the plain language of the First Amendment, that no law shall be made respecting an establishment of religion, has in effect been violated by a nineteenth century word-trick, as shown, used against her by defendants herein.

14. Plaintiff asserts her First Amendment right not to be coerced by any law, or pretension thereof, into submitting to any religion of the psyche or confessional

practice thereof, and further claims the protection of the First Amendment as having been expressly adopted to prevent such coercion by any law, despite any later naming or renaming of any practice of religion as a medical practice.

15. Defendants are, directly or indirectly, engaged in, and profit from, said secular religion of the psyche, or have promoted same, or concealed wrongs of same, and have acted in concert to establish same, under the color of the law, and to impose same as a de facto religion or confessional test of the psyche, by corrupt practices, constituting what is commonly known as a protection racket, to plaintiff's grave prejudice and damage, and in violation of plaintiff's First Amendment right."

4. The text of the order to show cause has no provision for service thereof on Mrs. Green, despite a statement in the brief (2B&K) that "due notice" was served upon her.

5. Significantly, although Mrs. Green is clearly no criminal defendant, the district court, rejecting her claim that psychiatry is pseudo-medicine, held that it "is a bona fide aspect of the medical profession," offering as its sole reason therefor "criminal code provisions that permit and at times require the examination of a criminal defendant by a qualified psychiatrist." (p. 8 of petition).

6. Equally significantly, Mr. Justice Douglass, in his concurring opinion in *Schlagenhauf v. Holder,* 379 U.S. 104 (1964), very early perceptively observed that a psychiatrist's report of his private office "examination" may overawe a jury.

7. Moreover, respondents' arguments are not bona fide.

Inapplicable cases are cited (9B&K, 5M-6M), and misrepresented; *e.g. Parham v. J.R.,* 442 U.S. 584, to argue that it "is a case in which, as in many others, the Supreme Court has expressly identified the practice of psychiatry as a legitimate branch of medical science. . . ." One looks there in vain for such words, obviously read in for the authority desired. That is a *doctrinal* question, never presented or briefed, nor could it be constitutionally. A doctrinal clash, if any, arising here, must be incidental to petitioner's constitutional challenge. This challenge is to: (1) forensic *practice* of psychiatry, mental hygiene, etc., contrary to *petitioner's opinion* (which is far from frivolous, as research shows); and (2) "a judicial-type" (or any) "mental hygiene" hearing as itself constitutional violation aggrieving her.

The baseless disciplinary proceeding by Mr. Blum, in his own Bar Association Disciplinary Committee, were to delay preparation of the petition and this brief, not "to police its own bar." (11B&K).

Nearly half of the argument for respondent Moorehead (8M-9M) addresses a claim not before this Court: a psychiatric claim to judicial immunity. Rejected in the district court (Supp. App. VIII to petition, 34a), not considered on appeal, no party has presented this question in this Court.